

Application Serial No. 10/630,831
Reply to Office Action dated November 29, 2004

REMARKS/ARGUMENTS

Initially, the Applicant would like to thank the Examiner for reconsidering and withdrawing the drawing objections in this case. At present, only rejections made under 35 U.S.C. § 103 exist in the application. More specifically, in the prior Office Action, the Examiner relied upon Davis et al. Patent 6,739,146 in view of Cheng Patent No. 6,457,955 in rejecting claims 17-21, 24 and 26, while adding Newman Patent No. 5,256,159 in rejecting claims 1-16, 22, 23 and 25. This rejection has been withdrawn based on prior presented remarks. Regardless of the various distinctions raised between the secondary references and the present invention, in the outstanding Office Action, the Examiner has generally just replaced the Davis patent with McLean Patent No. 3,659,429. Otherwise, the positions taken by the Examiner are seen to be quite the same. This is particularly clear in the Office Action on the bottom of page 3 wherein, in initiating the discussion of McLean in view of Cheng and Newman, the Examiner actually refers to "Davis et al." instead of the McLean patent. Regardless, it is respectfully submitted that the McLean reference is not at all concerned with a stirring fan used to develop a recirculating airflow in a manner analogous to that of the present invention and the patents to Cheng and Newman are simply not being utilized by the Examiner for what they teach as a whole such that it is respectfully submitted that one of ordinary skill in the art would not consider obvious the combination set forth by the Examiner. Support for these positions are presented below.

Initially, it must be recognized that the present invention is concerned with a refrigerator provided with a fresh food stirring fan assembly as recited in each of the independent claims of the present application. With specific reference to independent claims 1, 2 and 17, the Examiner will note that the stirring fan assembly must include a central portion through which a recirculating airflow is drawn and a peripheral portion for redirecting the recirculating airflow back into the fresh food compartment. Therefore, operation of the stirring fan causes a recirculating airflow for the refrigerator compartment. Although it can be utilized in various ways, the stirring fan of the present invention is employed in a fresh food compartment and is particularly operated when the

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fresh food compartment is fluidly isolated from the freezer compartment. During this time, substantial stratification in temperature can occur in the fresh food compartment which is substantially limited by the operation of the stirring fan of the present invention. In addition, the stirring fan can include a filter for removing odors carried by the air within the fresh food compartment. These aspects of the invention are emphasized throughout the application, such as on page 12, lines 3-7 and page 13, lines 10-14, and also brought out in method claim 26.

Because the function of the stirring fan is to recirculate airflow in the fresh food compartment, the stirring fan is not directly associated with temperature control housing 18. As clearly shown in Figure 1 of the application, stirring fan 30 is actually located well below temperature control housing 13 which opens to passage 19 as shown in Figure 3 to fluidly interconnect freezer compartment 13 with fresh food compartment 8. This overall arrangement is quite distinct from that disclosed by McLean in U.S. Patent No. 3,659,429. In accordance with this patent, fan housing 12 is located so as to directly receive a flow of cold air from freezer side space 2 through a passage 38 and a damper 42 (see Figure 3 and the discussion in column 2 lines 24-27 and lines 53-57). When operated, fan 12 draws cold air through passage 38 for delivery into the fresh food compartment 8. If the overall refrigeration system is operated, damper 42 is opened wider and a substantial amount of air is directed into fan housing 2 and fresh food compartment 8 from freezer compartment 2. However, when the refrigeration system is not operated, opening 38 is more restricted. In any case, the front central portion of fan housing 12 includes incline louvers 54 and the lower portion of fan housing 12 includes openings 56 used to discharge the cold air from the freezer compartment into the fresh food compartment. The air will eventually be directed back to the freezer compartment and main refrigeration system through passage 46.

In this sense, instead of a natural convective flow of air from the freezer compartment to the fresh food compartment, fan 12 provides a forced airflow. Regardless, this fan assembly is not utilized as a stirring fan to develop a flow of recirculating air in a manner analogous to that of the present invention. For this same

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reason, fan 12 cannot be located at a position spaced from the passage or opening to the freezer compartment in a manner analogous to fan 30 being spaced from control housing 18. Still further, fan housing 12 does not include a central inlet and a peripheral outlet as specified in each of these claims. Instead, the inlet to fan housing 12 is through passage 38 and outlets are defined at the front and lower portions of the housing as clearly disclosed in this patent. In this sense, McLean is simply not at all concerned with a stirring fan analogous to that of the present invention. In addition, the prior art fan is not structured in a manner specified in each of the independent claims of the present application. Therefore, it is respectfully submitted that the characterization of the McLean reference in the Office Action is misplaced such that withdrawal of the overall rejection is warranted.

Even though it is considered that the vast differences between the McLean arrangement and that the present invention warrant withdrawal of the rejection and allowance of the claims, the Applicant would also like to address the secondary references relied upon by the Examiner. As previously indicated to the Examiner, it is considered that the Cheng and Newman patents are far afield of the present invention and that the references themselves do not provide motivation for making the combination suggested by the Examiner. More specifically, the Examiner asserts that the fan of Cheng teaches developing a cooling airflow to dissipate heat from an object and that Newman teaches the use of a fan including a filter for deodorization. In contrast, the stirring fan employed in the present application is not used for cooling or heat dissipating purposes but is employed to create a recirculating airflow and to prevent temperature stratification. It is considered that the Examiner must utilize Cheng for what it teaches, and that is dissipating heat from an object, not creating a recirculating airflow as presented in the claimed invention. Likewise, Newman teaches a deodorizing apparatus for use in removing odors from bodily waste reservoirs, not from an airflow in a fresh food compartment of a refrigerator. There is simply no disclosure in the Cheng reference nor the Newman reference which would appear to motivate one of ordinary skill in the art to incorporate the fan of Cheng or the personal deodorizing apparatus of Newman into a refrigerator for the purpose of creating a substantially uniform temperature or for

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removing food odors. Instead, it appears that the Examiner is simply using the claims as a blueprint to find and apply prior art. In an attempt to substantiate the use of these references, the Examiner relies on *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). First of all, it is very interesting that the Examiner would cite a case wherein the U.S. Patent Office was reversed by the CAFC. The broad statement provided by the Examiner concerning a reference being in the field of Applicant's endeavor or, if not, then being reasonably pertinent to the particular problem with which the inventor is concerned, is present in the cited case. However, that general overview was utilized against the Patent Office to reverse a rejection made under 35 U.S.C. § 103. The court specifically stated that patent examination is necessarily conducted by hindsight with complete knowledge of Applicant's invention. The court went on to recognize the subjective aspects of determining whether an inventor would be reasonably motivated to go the field in which the Examiner found the reference in order solve the problem confronting the inventor. The court specifically said it was necessary to consider "the reality of the circumstances" or the rather use "common sense" in deciding which fields a person of ordinary skill in the art would reasonably be expected to look for a solution to the problem facing the inventor.

In the case to which the Examiner is referring, the Oetiker invention was directed to a stepless, earless metal clamp which differed from a prior patent issued to Oetiker based on the presence of a hook used to maintain the pre-assembled condition of the clamp, with the hook being automatically disengaged when the clamp is tightened. The Patent Office rejected the claims based on the earlier Oetiker patent in view of a patent to Lauro which described a plastic hook and eye fastener for use in garments. Oetiker argued that there was no motivation to combine the references and that the Lauro reference was in a non-analogous art. Particularly, it was argued that one of ordinary skill in the art looking to solve the problem facing Oetiker would not look to the garment art for the solution. The Patent Office took the position that the Lauro reference was both within the field of endeavor and analogous art. The Board of Patent Appeals held that the Lauro reference was not within the specific field of endeavor but nonetheless, was analogous art because it related to a hooking problem. The court, on the other hand,

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stated that one of ordinary skill in the art seeking to solve a problem of fastening a hose clamp would not reasonably be expected or motivated to look in fasteners in garments. The court went on to reason that the combination of elements from non-analogous sources which reconstructs the Applicant's invention only with the benefit of hindsight is insufficient to establish a *prima facie* case of obviousness. Instead, it is stated that there must be some reason, suggestion or motivation found in the prior art which would lead one of ordinary skill in the art to make the combination. For these reasons, the Patent Office was reversed.

Based on the above, it is respectfully submitted that simply stating one point raised in a prior case (*In re Oetiker*) does not adequately substantiate the use of the Cheng and/or Newman reference in the present case. It is unclear to the Applicant whether the Examiner considers these references to be in the field of the Applicant's endeavor or just reasonably pertinent to the particular problem which the Applicant is concerned. It is seen clear that neither of these references are in the field of the Applicant's endeavor of refrigerators. In addition, as indicated above, Cheng teaches to develop a cooling airflow to dissipate heat from an object wherein the present stirring fan is utilized to recirculate airflow to prevent temperature stratification in a refrigerator chamber. In addition, Newman teaches a filter for deodorization in connection with bodily waste reservoirs, not from an airflow of a fresh food compartment of a refrigerator. For these reasons, the Applicant would also like to cite to the Examiner *In re Oetiker*, except for the proposition of withdrawing the rejection presented as these references are not in the field of the present invention or concerned with corresponding problems.

In addition to not meeting the specifics set forth in the broader independent claims, the prior art references, when taken singly or in combination, are not seen to teach many of the more limiting features found in the dependent claims of the present application. For example, claim 8 requires that the stirring fan include a base plate having an annular side wall, claim 10 requires that the side wall include a cover receiving section which frictionally retains the cover, claim 14 requires that the housing be provided with a plurality of support elements that are mounted to a rear wall of the

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refrigerator liner and claim 15 further requires that the support elements be formed with slots for mounting purposes. No corresponding structure is seen to exist in the prior art to these features and they have not been appropriately addressed in the Office Action.

Based on the above, it is respectfully requested that all of the rejections be withdrawn, the claims allowed and the application pass to issue. If the Examiner should have any additional concerns regarding the allowance of this application, he is cordially invited to contact the undersigned at the number provided below to further expedite the prosecution.

Respectfully submitted,



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